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UNITED STATES DISTRICT COURT  
 SOUTHERN DISTRICT OF NEW YORK

-----X  
 JOHN LANGERT,

Plaintiff,

-against-

AMY TOCCO, M.D., et al.,

Defendants.  
 -----X

USDC SDNY  
 DOCUMENT  
 ELECTRONICALLY FILED  
 DOC #:  
 DATE FILED: 6-3-08

ECF Case

08 Civ. 4405 (DLC)(DF)

STIPULATION AND ORDER OF  
 SUBSTITUTION OF UNITED  
 STATES AS DEFENDANT FOR AMY  
 TOCCO, M.D., DAVID WALKER,  
 M.D., AND HUDSON RIVER  
 HEALTHCARE, INC., AND  
 DISMISSAL OF THE ACTION AS  
AGAINST THE UNITED STATES

WHEREAS on or about November 9, 2007, plaintiff John Langert filed a Summons and Verified Complaint in the Supreme Court of the State of New York, County of Dutchess, Index No. 7682-2007, against Amy Tocco, M.D., David Walker, M.D., Hudson River HealthCare, Inc., Vassar Brothers Hospital, Francine Hope Brooks, M.D., "John Doe," M.D. and "Jane Doe," M.D., Jayesh R. Modi, M.D., and Dutchess Surgical Associates, P.C. alleging, inter alia, that they committed negligent acts and omissions in providing medical care to plaintiff John Langert and that, consequently, these negligent acts and omissions led plaintiff John Langert to suffer various personal injuries; and

WHEREAS on or about May 9, 2008, Michael J. Garcia, the United States Attorney for the Southern District of New York removed the action to this Court pursuant to section 224(c) of the Public Health Service Act, 42 U.S.C. § 233(c), and 28 U.S.C. § 2679(d)(2), based on the United States Attorney's certification, dated May 2, 2008, that defendants Amy Tocco, M.D., David Walker, M.D., and the Hudson River HealthCare, Inc. were acting within the scope of their federal employment at all

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times relevant to the allegations of this complaint,

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and among the plaintiff, defendants Amy Tocco, M.D., David Walker, M.D., the Hudson River HealthCare, Inc., and the United States, by their respective counsel, as follows:

1. Pursuant to section 224(a), (c), of the Public Health Service Act, 42 U.S.C. § 233(a), (c), and 28 U.S.C. § 2679(d), the United States shall be substituted as defendant in this action to the extent plaintiff's claims are against Amy Tocco, M.D., David Walker, M.D., and Hudson River HealthCare, Inc.; and

2. All of plaintiff's claims against Amy Tocco, M.D., David Walker, M.D., and Hudson River HealthCare, Inc., are dismissed with prejudice and without costs or attorney's fees to any party; and

3. Plaintiff's claims as against the United States are dismissed without prejudice and without costs or attorney's fees to any party, such dismissal being made pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure because plaintiff failed to exhaust his administrative remedies with the appropriate federal agency, as required under 28 U.S.C. § 2675(a), prior to filing a complaint in this action; and

4. The parties understand and agree that this stipulation does not waive any rights of any party under the Federal Tort Claims Act, 28 U.S.C. §§ 1346(b), 2671-2680, or any other applicable law; and

5. The parties understand and agree that this stipulation contains the entire agreement between them, and that no statements, representations, promises, agreements, or negotiations, oral or otherwise, between the parties or their counsel that are not included herein shall be of any force or effect.

*So ordered.*

*Janice Cote*  
*June 3, 2008*

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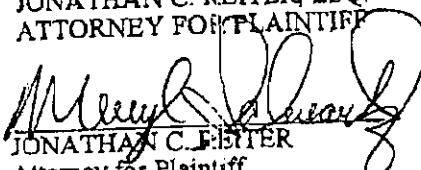
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US ATTORNEY

Dated: New York, New York  
May 23, 2008

JONATHAN C. REITER, ESQ.  
ATTORNEY FOR PLAINTIFF

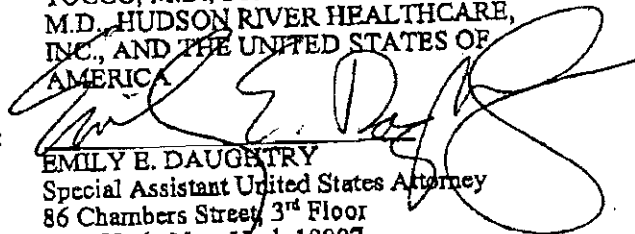
By:

  
JONATHAN C. REITER  
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350 Fifth Ave., Suite 2811  
New York, New York 10118  
Telephone No. (212) 736-0979

Dated: New York, New York  
May 27, 2008

MICHAEL J. GARCIA  
United States Attorney for the Southern  
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ATTORNEY FOR DEFENDANTS AMY  
TOCCO, M.D., DAVID WALKER,  
M.D., HUDSON RIVER HEALTHCARE,  
INC., AND THE UNITED STATES OF  
AMERICA

By:

  
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SO ORDERED.

Dated: New York, New York  
May \_\_\_, 2008

HON. DENISE L. COTI  
UNITED STATES DISTRICT JUDGE

**COPIES SENT TO:**

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**PLEASE IMMEDIATELY SEND COPIES TO  
ALL COUNSEL**